

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA WARREN COUGHLIN,

Plaintiff-Appellee,

v

ROBERT DAVID COUGHLIN,

Defendant-Appellant.

UNPUBLISHED

September 11, 1998

No. 207204

Kent Circuit Court

LC No. 96-004122-DM

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce which awarded plaintiff physical custody and both parties joint legal custody of the parties' two minor children. We reverse and remand for further proceedings.

Defendant first contends that the trial court erred because it failed to find whether an established custodial environment existed.

All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; MSA 25.312(8), *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994).

In this case, temporary custody orders had been entered before the judgment of divorce was entered. On April 9, 1996, the trial court entered a stipulated temporary order that the parties had joint legal custody of the children, that plaintiff had "primary physical care, custody and control of the minor children," and that defendant had parenting time with the children at such times as the parties mutually agreed. Subsequent temporary orders modified parenting time, but did not address custody. In such a situation, the trial court must first determine whether an established custodial environment existed. *Bowers v Bowers*, 190 Mich App 51, 53; 475 NW2d 394 (1991).

After a one-day trial, the court issued an opinion with the following finding on custody:

The parties are awarded joint legal custody with the physical custody with the Plaintiff. Defendant sought joint physical custody and one overnight Wednesday. The Court finds that joint physical custody and a mid-week overnight are not in the children's best interest. The Friend of the Court evaluator did not take into account Plaintiff's concerns when she made the overnight recommendation at Defendant's request. The children need a stable environment without being bounced back and forth between parents.

The judgment of divorce does not contain any additional findings on custody.

The trial court made a clear error of law because it failed to make a finding regarding whether a custodial environment was established. Although the stipulated temporary order granted plaintiff primary physical custody of the children, that order did not, by itself, establish the custodial environment. *Baker v Baker*, 411 Mich 567, 579; 309 NW2d 532 (1981); *Bowers v Bowers*, 198 Mich App 320, 325; 497 NW2d 602 (1993). Accordingly, we hold that the trial court erred because it failed to find whether an established custodial environment existed and we remand this matter to the trial court to make an appropriate finding.

Defendant also argues that the trial court erred because it failed to make findings on the statutory factors as set forth in MCL 722.23; MSA 25.312(3).

Custody disputes are to be resolved in the child's best interest, as measured by the factors set forth in MCL 722.23; MSA 25.312(3). *Treutle v Treutle*, 197 Mich App 690, 694; 495 NW2d 836 (1992). The trial court must consider and explicitly state its findings and conclusions with regard to each factor. *Id.*; *Schubring v Schubring*, 190 Mich App 468, 470; 476 NW2d 434 (1991). Here, the trial court committed clear legal error because it did not make any findings on the statutory factors regarding the children's best interests as listed in MCL 722.23; MSA 25.312(3).

Accordingly, the trial court committed clear legal error where it first failed to determine whether an established custodial environment existed and where it failed to consider and state its findings and conclusions with regard to each of the statutory best interest factors. Such error cannot be deemed harmless and we remand to the trial court for reevaluation of the issues of custody and parenting time. *Fletcher, supra*, p 889.

Reversed and remanded. Jurisdiction is not retained.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra